

## REMARKS

Presently claims 16-29 are pending in this application. While no claims have been amended with this response, Applicant respectfully provides the Examiner with the Claim Listing above. Applicant will now respectfully address the Examiner's rejections.

### Rejections under 35 U.S.C. 103(a)

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being obvious over United States Patent No. 5,403,611 to Tomita ("Tomita" hereinafter) in view of United States Patent No. 6,679,314 to Frank ("Frank" hereinafter). Applicant respectfully traverses.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant's claim 16 recites *inter alia*,

"a mixing-in arrangement for mixing of solid ingredients into the continuous flow of mass between the first through-flow freezer and the second through-flow freezer."

For various reasons, neither Tomita nor Frank, taken alone or in combination, teach a *mixing-in arrangement for mixing of solid ingredients* into the continuous flow of mass *between the first through-flow freezer and the second through-flow freezer*. Applicant first respectfully points out that element 12 of Frank, which the Examiner relies upon to teach the "mixing-in arrangement" of Applicant's claims, is not a mixing-in arrangement of any kind. Instead, referring to column 3, lines 16-18, element 12 of Frank is taught as a "supply source," which includes various supply tanks (i.e. a water supply tank, syrup

supply tank, and carbon dioxide supply tank. Accordingly, Applicant respectfully asserts that the supply source 12 of Frank is in no way taught as a mixing-in arrangement “for mixing,” as is asserted by the Examiner and required in Applicant’s claims.

Additionally, even if the supply source 12 were, *pro arguendo*, taught for mixing, this source 12 is certainly not taught for mixing “solid ingredients.” On the contrary and as mentioned above, the ingredients disclosed to be included in the supply source 12 of Frank are water, syrup, and carbon dioxide. Applicant respectfully asserts that non of these ingredients could be considered to be “solid,” as required by Applicant’s claims.

Furthermore, with respectful reference to the element of the claims that recites the mixing-in arrangement to be disposed “between the first through-flow freezer and the second through-flow freezer,” Applicant respectfully disagrees with the Examiner’s contention that such a positioning of the mixing-in arrangement would be obvious because it provides no “criticality.” On the contrary, Applicant respectfully submits that placing the mixing-in arrangement after the freezer as opposed to before the freezer (as taught in Tomita) has been found to be highly advantageous when ice cream mass is brought from liquid state to an at least partially frozen state at a temperature between  $-1$  and  $-10$  degrees Celsius. The solid ingredients will only be brought to a uniform distribution within the ice cream mass when the ice cream mass is of a viscosity allowing the solid ingredients to be suspended therein. Thus passage of the solid ingredients through the first freezer is accordingly superfluous. By avoiding passage of the solid ingredients through the first freezer, the solid ingredients are subjected to no more mechanical impact than necessary, thus reducing damage to the solid ingredients. As such, positioning of the mixing-in arrangement between the first through-flow freezer and the second through-flow freezer is critical to Applicant’s claimed arrangement, particularly in light of the claimed mixing of ***solid ingredients***. In addition, for at least the reasons discussed in this paragraph, even if the supply source 12 of Tomita were to be a mixing arrangement as claimed, positioning such an arrangement before the first freezer (as taught by Tomita) would not work “equally as well” as positioning the mixing-in arrangement between the first through-flow freezer

and the second through-flow freezer (as claimed by Applicant), particularly considering the mixing in of solid ingredients (as is also claimed by Applicant).

For at least the above reasons, the proposed combination of Tomita and Frank does not teach every element of claim 16 or claims 17-19 that depend therefrom. Thus, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify or combine Tomita and Frank, or a reasonable likelihood of success in forming the claimed invention by modifying or combining Tomita and Frank. For at least these reasons, Applicant respectfully submits that *prima facie* obviousness does not exist with regards to claims 16-19.

Claims 20-29 is rejected under 35 U.S.C. 103(a) as being obvious over Tomita in view of Frank and United States Patent No. 4,472,059 to Klein ("Klein" hereinafter). Applicant respectfully traverses.

Again, for an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

As claims 20-29 depend from claims 16, for at least the reasons discussed above, any proposed combination of Tomita and Frank does not teach every element of claims 20-29. Since Klein does not remedy the above discussed deficiencies of Tomita and Frank, the proposed combination of Klein, Tomita, and Frank fails to teach or suggest all of the limitations of claims 20-29. As the proposed combination of Klein, Tomita, and Frank does not teach every element of claims 20-29, clearly, one of ordinary skill at the time of Applicant's invention would not have a motivation to modify or combine Klein, Tomita,

and Frank, or a reasonable likelihood of success in forming the claimed invention by modifying or combining Klein, Tomita, and Frank. For at least these reasons, Applicant respectfully submits that *prima facie* obviousness does not exist with regards to claims 20-29.

With further, more specific reference to claims 20-29, Applicant respectfully disagrees with the Examiner's contention that it would have been obvious to provide Tomita with a scraping mechanism comprising a conveyor screw that includes a plurality of screw flights. Firstly, Klein does not disclose screw flights extending at different radial distances from the longitudinal axis (see for instance claim 20 and paragraph [0017]). Thus, combination of Tomita and Frank with Klein is irrelevant to this screw flight element.

Secondly, one of the exemplary purposes of Applicant's second freezer, in which the conveyor screw is used, is to obtain "a uniform distribution of the solid ingredients in the ice-cream mass at the outlet of the second through-flow freezer" (last three lines of paragraph [0009]). On the contrary, Klein teaches that a conveyor screw is provided for "segregation of unplasticated material" (column 1, lines 42-43) and for "preparing a plasticated material from solids" (column 2, lines 2-3). Thus, there is no indication, whatsoever, in Klein that such a conveyor screw would be useable, let alone suitable, for purposes disclosed by Applicant, and the combination of Tomita, Frank and Klein would certainly not be obvious for a person skilled in the ice cream art.

Conclusion

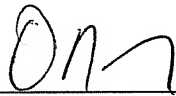
The rejections herein overcome. Entry of the present Response with Amendment and prompt issuance of a Notice of Allowance are respectfully requested.

Applicant hereby petitions for any necessary extension of time required for consideration of this Response.

Please charge any fees due with respect to this Response, or otherwise regarding the application, to Deposit Account 06-1130 maintained by Applicant's attorneys.

The Office is invited to contact Applicants' attorneys at the below-listed telephone number regarding this Response or otherwise concerning the present application.

Respectfully submitted,

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